

The Legal Services Board,  
1 Kemble Street  
London  
WC2B 4AN

7 March 2018

Dear Sir or Madam,

### **Imminent decision whether to approve the SQE Regulations**

My name is David Dixon. I am a senior lecturer in law at Cardiff University School of Law and Politics. I am writing in a personal capacity to ask you not to approve the SQE regulations which the SRA has submitted to you.

#### **Background**

I have a longstanding interest in vocational legal education. From 1982 - 1984 I was a member of the national committee of the Law Society's Trainee Solicitors Group. The Solicitors' Final Examination and the quality and supervision provided by the training contract were items on the agenda of every meeting. I was education and training officer for Monmouthshire Incorporated Law Society from 1990-1992. Since 1993 I have written and taught courses on the Legal Practice Course at Cardiff and, since 2012/2013, the Graduate Diploma in Law. I have a vested interest in the education and training of solicitors.

Since 2006 I have represented South Wales on the Law Society council and have been a member of the Society's Wales committee since 2006 (I chaired it from 2011-2014) and its education and training committee since 2008.

#### **Submission**

I have read the Law Society's submission concerning these regulations and the letters submitted by Hardee Consulting and the City of London Law Society. I endorse their arguments. It is premature to approve these regulations when the SQE has not been tested or quality-assured. It is significant that practising solicitors as well as legal academics object to the approval of these regulations while the SQE's final form is uncertain.

I am writing in my personal capacity because the SRA proposes not to provide the SQE in the Welsh language and it is possible that the SQE will not be held within Wales. I understand the Welsh Language Commissioner and Counsel General for Wales are writing to you expressing their concerns about this.

Since 2015, Outcome O(TR5) of SRA Training Regulations 2014 - Qualification and Provider Regulations has stated that "if you qualify as a solicitor you will have achieved an appropriate standard of written and spoken English or Welsh". The regulations include proficiency in Welsh because universities in Wales are required to comply with the Welsh language standards imposed by Welsh Language (Wales) Measure 2011. It is possible for a person to qualify as a solicitor having taken all his/her assessments at degree level and on the LPC in the Welsh language and completed his/her period of recognised training in Welsh.

In this connection I should point out that Welsh Language (Wales) Measure 2011 s 1(1) gives the Welsh language official status in Wales and Government of Wales Act 2006 s A2(2) “recognise[s] the ability of the Assembly and the Welsh Ministers to make law forming part of the law of England and Wales”.

After the SRA announced it was proceeding with the SQE last spring, I sought an assurance that someone whose first language is Welsh would be able to qualify through the SQE regime by taking all the assessments in his/her language of choice. The response was that Welsh law is peripheral to the subjects examined in SQE1. This answer was unsatisfactory as it did not take account of the fact of divergent Welsh and English law, the increase in devolved powers given to the National Assembly by Wales Act 2017 and the probable further increase in devolved powers during the 10 year contract between the SRA and the SQE Assessment Organisation. So I approached the Welsh Language Commissioner asking her to intervene. I hoped for a swift assurance that the SRA would require those tendering bids to become the SQE Assessment Organisation to hold the SQE in Wales in Welsh. This would oblige them to take account of the cost of providing the SQE in Welsh when they prepared their bids.

Unfortunately, progress was delayed. The Commissioner wrote to the SRA and a month ago I received from her a précis of the response to her letter from the chief executive of the SRA. In that letter the SRA stated it would not provide the SQE in the Welsh language. I set out its reasons below, followed by my comments:

- 1 the additional expense to candidates of mandating that the assessment must be offered in Welsh. There is no substance to this objection. Currently some 8,000 students enrol on the LPC. It is reasonable to assume that an equivalent number will register annually for the SQE in each of the 8 years which will remain of the SQE contract when the SQE comes into force. Thus some 64,000 students will be paying the fee for the SQE. Add the numbers who will resit the SQE each year and it is foreseeable that 90,000 candidates will take the SQE over the 8 year period. The costs of translating the assessment would be spread amongst them. For example, if the translation cost £1,000,000, the additional cost to each of the 90,000 candidates would be only £11 per head;
- 2 the SRA is not currently included in the list of bodies subject to a duty to comply with standards relating to the Welsh language in the Welsh Language (Wales) Measure 2011. This is true, but once the SRA assesses prospective solicitors within Wales, it and the Law Society (as approved regulator) are likely to be added to the relevant schedules of the Measure because universities and other regulators which provide assessments in Wales are within the schedules. The willingness of the Commissioner and Counsel General to submit letters asking you not to approve the SQE regulations because of the Welsh language issue should satisfy you on this point. The SRA's failure to give an unequivocal commitment to hold the SQE in Wales leads me to suspect that the SQE may not be held within Wales if the SRA was added to the schedules of the Measure. Should that occur, it would bring the SRA into disrepute. There is no reason why the SRA should be exempt from or be able to avoid the requirement on universities (and other regulators) to provide assessments in Welsh.
- 3 good practice requiring assessment conditions to include as few variables as possible - offering the SQE in either Welsh or English considered as being one such example.

- 4 the SRA's opinion that offering the SQE in Welsh would encourage the divergence it is seeking to remove by introducing the SQE.
- These points are linked so I am answering them together. In relation to point 3, translating an assessment into another language does not alter the "assessment conditions". As to point 4, translating the assessment into Welsh does not alter the assessment - it is the same assessment expressed in a different language. As for the SRA's fear of divergence, the laws of England and Wales are diverging. The only fair way to administer the SQE is to adjust the assessments sat by students who intend to practise in England and those who intend to practise in Wales. For example, a student intending to practise in England would sit a Property Law and Practice paper which referred to Stamp Duty Land Tax while a student who intended to practise in Wales would sit a paper which referred to Land Transaction Tax. Once that fair variable is accepted, the fair variable of choice of language is harder to resist.
- 5 translation of question papers would take time and effort in addition to increased cost. True, but isn't it reasonable to expect the frontline regulator and its Assessment Organisation to take sufficient time and effort to make the assessment right and workable in every respect? Doesn't the SRA expect its regulated community to take the time and effort to get its advice right?

The SRA also justifies holding the SQE only in English by citing "The ability of Welsh universities to continue offering law and other degrees through the medium of Welsh, also noting that candidates can continue to develop their professional competences in Welsh/bilingually through other means regardless of the decision, i.e. workplace related training experience". The SRA is confusing the ability of Welsh universities to offer law and other degrees through the medium of Welsh with their statutory obligation to do so. Further, and rather oddly, the SRA does not seem concerned with the anomaly that intending solicitors who are primarily Welsh speakers will complete their school and any university studies, their period of recognised training and conduct their professional career in the Welsh language if they wish to but they must be assessed for the SQE in the English language.

Legal Services Act 2007 s 1(1)(b) states that one of the regulatory objectives of the Act, is "supporting the constitutional principle of the rule of law". Requiring candidates whose first language is Welsh (which is recognised in the law of England and Wales as an official language) to take the SQE in English when it is not their language of choice is contrary to the rule of law. I hope you will bear this regulatory objective in mind and do not approve the SQE regulations. No-one, especially not a regulator, is above the law and the SRA should not be able to circumvent the Welsh Language (Wales) Measure 2011 by holding the SQE only in English or, if it came to it, only in England, when universities and other regulators who assess candidates in Wales are obligated to assess in the Welsh language upon request.

Yours faithfully,

David Dixon